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Supreme Court, U.S.
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No. 03-1121

IN THE

Supreme Court of the United States

TWIN LAKES DEVELOPMENT CORP.,

Petitioner,

-v-

TOWN OF MONROE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
NEW YORK COURT OF APPEALS

PETITIONER'S REPLY BRIEF

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PRELIMINARY STATEMENT

This Reply Brief is submitted in response to the Opposition Brief of the Respondent Town of Monroe. It responds to two issues that were not treated in the Petition and have been called to attention by the Town's Opposition Brief.

I. The Town Never Put Forth Any Proof of Proportionality as Meant by *Dolan*

The Town argues that Twin Lakes never refuted its "evidence" in support of the in lieu of parkland fee under challenge and therefore the burden of proving the fee's disproportion shifted back to Twin Lakes. Opposition Brief pg. 7,8.

On its motion to the NY Supreme Court the Town never put forth any evidence that the fee was proportional to the impacts generated by the Twin Lakes Subdivision. As pointed out in its Opposition Brief (pg. 7) the Town claimed in the lower courts only that there was "no doubt" that "if" a study of individuated impacts had been made the in lieu of charge would have been much higher than $1,500.00 per lot.[1] That is evidence of nothing. It is an attorney's argument. More importantly, it is a clear admission that no recreational needs study

[1] Of course, that observation begs the main question. Only after a *Dolan* type individuated study had been done could that fact be determined.

was ever done by the Town no less one correlated to the recreational impacts generated by the Twin Lakes development.

In the same vein the Town also argues in its Opposition Brief (also at pg. 7) that it put forth evidence at the trial court that the Town Board in setting the in lieu of parkland fee settled for a nominal amount well below what the "per household costs" the Town would incur for recreation and parkland. But the Town fails to point to a finding of some sort in the record where that per household cost was, in fact, determined. There was no such finding. There was simply no evidence before the lower courts in this regard.

On the Town's motion in the trial court there was no evidence of any kind put forth by the Town Board that it had made an "individualized determination" that the in lieu of parkland fee assessed to and paid by Twin Lakes was "related both in nature and extent to the impacts of the proposed development [i.e., the Twin Lakes development.]" *Dolan* at 512 U.S. 391. Even assuming the legitimacy of its returned burden of proof argument (which only begs the question presented by the Petition) the Town, on its motion, put forth no proof at all no less that

required by *Dolan*. There was no evidence or proof for Twin Lakes to "refute."[2]

II. The Town's Argument in Favor of Mootness and Lack of Standing Has No Place Here

The Town argues in its Opposition Brief (Reasons for Denial - Section IV, pp. 13-15) that the Twin Lakes complaint is moot and that Twin Lakes lacked standing to maintain this action. The Town raised these identical arguments at the Appellate Division of the NY Supreme Court when Twin Lakes pursued its first appeal. It did so by a separate motion to dismiss that appeal which was opposed by Twin Lakes. The Appellate Division specifically rejected those arguments and denied that motion. See *Twin Lakes v. Town of Monroe*, - A.D.2d -, 752 N.Y.S.2d 889 (2nd Dept., 2002). The Town took no appeal from that denial. Notwithstanding, the Town again raised the same arguments in an effort to disuade the NY Court of Appeals from exercising its discretionary jurisdiction. That court paid no heed to the argument. These arguments have been rejected by the appellate courts of New York twice

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[2] If there was some evidence in this case of the recreational impacts generated by the Twin Lakes development or a "per household" recreational costs in the Town the NY Court of Appeals would have explored and discussed them. There wasn't any. In making its as applied determination that Court was limited to the Town Board's findings set forth in Section 1 of the fee law and the Planning Board's condition set out in the approval resolution. There was no more than that before any of the lower courts that reviewed this matter.

and that rejection is final. They should be disregarded by this Court.

The Petition should be granted.

Respectfully submitted,

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